

REMARKS

Claims 1 and 2 remain pending in this application. Claim 1 has been amended to clarify the nature of the tubular pin holders and engagement of the locking finger. No new matter has been presented.

Claims 1 and 2 remain rejected under 35 USC 103(a) on Young (US 7,011,658) in view of Nicosia (US 6,729,515). This rejection is respectfully traversed.

The Examiner's reliance on Nicosia under 35 USC 103 is improper because Nicosia is not analogous prior art. To be considered analogous prior art, a reference must either be in the field of Applicant's endeavor or be reasonably pertinent to the particular problem with which the inventor was concerned.

Foremost, Nicosia is not in the field of Applicant's endeavor. The field of Applicant's endeavor pertains to bone spreaders. The field of Nicosia's endeavor pertains to detachable backrests and luggage carriers for motor vehicles. These fields are not the same, and the Action fails to explain how or why a person skilled in the art of bone spreaders would understand these two fields as being the same. Further, Nicosia is not reasonably pertinent to the particular problem with which the inventor was concerned. As explained in the background section of the specification, the inventor was concerned with the problem of bone spreader locking devices that were not secure enough or too difficult to operate. In contrast, as explained in the background section of Nicosia, Nicosia was concerned with the problem of detachable backrests and luggage carriers being too easy to steal. A person skilled in the art would understand that Nicosia is not reasonably pertinent to the problem with which the present application is concerned.

The Examiner reasons that Nicosia is analogous art because it is "concerned with a similar technical difficulty, namely a means of fastening." Applicant respectfully disagrees. The mere fact that Nicosia discloses a fastening mechanism does make Nicosia analogous art. Nicosia must either be in the field of Applicant's endeavor or be reasonably pertinent to the particular problem with which the inventor was concerned. Simply put, what reason would

anyone in the art of this invention have had to look to Nicosia for any reason? None at all. Since Nicosia fails to satisfy either prong of this standard as explained above, Nicosia cannot be relied upon under 35 USC 103. Accordingly, this rejection should be withdrawn.

Claim 1 recites a bone spreader for spreading bones apart. The bone spreader includes a parallel guide system with a guide bar, two tubular pin holders and a locking device associated with at least one pin holder. The pin holders are connected to one another by the parallel guide system and are configured to receive pins that are connected to bone parts that are to be spread apart. The locking device has a locking finger that is guided between a locking position and a release position in a transverse movement tangentially with respect to the pin holder.

Claim 1 has been amended to recite that the tubular pin holders are arranged perpendicularly to the guide bar and are configured to receive pins that are axially introduced into the pin holders. Claim 1 has been further amended to recite that the locking figure is configured to engage in the groove of the pin in the locking position. These aspects of the claimed invention are neither taught nor suggested by the cited references.

The Examiner relies on Young as teaching the invention of claim 1 but for the locking device, for which the Examiner refers to Nicosia. However, the portion of Young on which the Examiner relies for teaching the tubular pin holders, elements A1 and A2 of FIG. 5, provides no disclosure of a tubular pin holder as claimed. Rather, elements A1 and A2 are screws with fixed U-shaped heads that are configured to be anchored into vertebrae V1 and V2. These anchors are engaged by shafts 38 and 65 of Young's device 30 to accomplish extension and retraction of the vertebrae. Since elements A1 and A2 are anchors configured to be connected to vertebrae, they do not hold pins and are not configured to receive pins connected to bone parts. There is no disclosure in Young of tubular pin holders that can accept pins as required by claim 1.

Further, notwithstanding that Nicosia is non-analogous art as explained above, combining Nicosia with Young would not result in the invention as claimed. The Examiner states that one would have been motivated to combine Nicosia's locking mechanism into Young's device "to

offer an equivalent and alternative means of securing the tubular [sic] pin in place.” Foremost, Young does not teach or suggest securing or locking its anchors in place relative to extension/retraction device 30. Rather, Young discloses a locking mechanism that restricts the extension and/or retraction of engagement ends 36 and 64 of device 30. Replacing the locking mechanism in Young with the locking mechanism in Nicosia would not provide a locking device for a pin as required by claim 1.

Accordingly, since Young does not provide the teachings for which it is cited, and the cited references do not disclose the elements required by the claims, the rejection of claim 1 and 2 should be withdrawn.

In light of the above, early action allowing claims 1 and 2 is solicited.

In the event the Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **246472009300**.

Respectfully submitted,

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